

internal space between the upper and lower cases.

REMARKS

Claim 4 has been amended to correct a grammatical error. Claim 13 has been added as a linking claim between Invention I and Invention II. No new matter is presented.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect **Invention I, claims 1-3, together with linking claim 13 which links Invention I and Invention II**, in response to the preliminary restriction requirement set forth in the Office Action and identify claims reading on the Inventions as follows:

Invention I Claims 1-3, claim 13

Invention II Claims 4-11

Invention III Claims 12

II. Applicants Traverse the Requirement

The Examiner considers Inventions I and II to be related as combination (Invention II) and subcombination (Invention I), and considers these inventions to be distinct pursuant to MPEP 806.05(c) because "the combination does not require 'a pair of elastic protrusions... elastically biased toward the internal space,'" and because "the subcombination has separate utility such as ascending from the sloped surface in an internal space between the upper and lower cases.

However, it is believed that claims 4-11 of Invention II and claim 12 of Invention III are so closely related to elected claims 1-3 and 13 of Invention I that they should remain in the same application.

Additionally, elected claim 13, added by the preceding preliminary amendment, reads on Invention 1. Elected claim 13 is a linking claim which links the inventions of Invention I, claims 1-3, and Invention II, claims 4-11 together. Pursuant to MPEP 806.05 and 908, it is respectfully submitted that the Examiner is required to consider linking claim 13. Furthermore, pursuant to MPEP 809, since elected claim 13 links together Invention I and Invention II, then even if the Examiner chooses not to withdraw the restriction requirement, if the linking claim is found

allowable, then any claims directed to the nonelected invention which requires all the limitations of the allowable linking claim (Invention II) must be rejoined and fully examined for patentability.

There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing both method and product claims in the same field of technology. While it is noted that the Examiner has identified different classifications for the product and method claims, it is believed that classification is not conclusive on the question of restriction. As noted on page 2, item 1 of the Office Action, Inventions I, II and III all fall within class 720. It is believed, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Invention II and Invention III claims by filing divisional applications.

Even if the Examiner considers claims 4-11 to be a separate invention from claims 1-3 of Invention I and claim 12 of Invention III, the Applicants respectfully request the Examiner to consider claims 4-11 (Invention II), claims 1-3 and 13 (Invention I), and claim 12 (Invention III) together.

MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required.

III. Conclusion

Upon review of references involved in this field of technology, when considering that the apparatus recited by elected claims 1-3 (Invention I) are directed to a disk cartridge, the apparatus recited by claims 4-11 (Invention II) are directed to a disk drive which loads a disk cartridge, and the method recited by claim 12 (Invention III) is directed at loading a disk cartridge into a disk drive, and, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 503333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

STEIN, MCEWEN & BUI, LLP

Date: 9/22/06

By:


Douglas E. Agopsowicz
Registration No. 56,792

1400 Eye St., NW., Ste 300
Washington, D.C. 20005
Telephone: (202) 216-9505
Facsimile: (202) 216-9510